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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

FAUSTO LOUIS MUNCAL-CLEMENTE,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

No. 02-70574

INS No. A38-465-769

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted April 11, 2003**
Pasadena, California

Before: PREGERSON, TASHIMA, and CLIFTON, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Fausto Louis Muncal-Clemente (“Muncal”) applied unsuccessfully for a waiver of deportability and for suspension of deportation. He timely petitioned for review of those decisions. We deny the petition.

We review for abuse of discretion the BIA’s denial of a waiver of deportability. Hernandez-Robledo v. INS, 777 F.2d 536, 540 (9th Cir. 1985).

There was no abuse of discretion as long as the BIA’s decision was rational. See id. at 541.

The BIA considered factors both in favor of and opposing waiver. It acknowledged that Muncal had resided in the United States for 18 years, that he had relatives, including his mother, living in the United States, that he was an active member of the community, and that he had a responsible job. It noted, however, that neither Muncal nor his family members in the United States would suffer abnormal hardship if he were deported.¹ It also noted that, because

¹Contrary to the dissent’s claim, it appears to us that the BIA did consider the impact on Muncal’s mother. It simply did not weigh that impact to be as heavy as the dissent does. We cannot say that the BIA’s evaluation was irrational. The record does not disclose any “particular hardships” or dependency. Muncal’s mother owns her own home. Each month, she receives a pension of \$900, Social Security benefits of another \$900, and her second husband receives Social Security benefits of \$700, for a total of \$2,500, tax free. The additional financial support provided by Muncal was limited. As for hardship, the second husband is available to drive the mother to her medical appointments. She also has two other adult children in California to assist her. On this record, we cannot agree that the

(continued...)

Muncal's wife and three children live in the Philippines, his primary family unit would not be disrupted. The BIA concluded that the positive factors were outweighed by the frauds Muncal had perpetrated in attempting to obtain naturalization, which included lying about the number of children he had, submitting forged birth certificates, and not rectifying his initial fraud. This conclusion was rational.

We lack jurisdiction to consider the application for suspension of deportation because Muncal did not raise the issue before the BIA. See Vargas v. United States Dept. of Immig. & Naturalization, 831 F.2d 906, 907-08 (9th Cir. 1987).

PETITION DENIED.

¹(...continued)
BIA abused its discretion in concluding that “[a]lthough undoubtedly his family members here in the United States would experience hardship if he returned to the Philippines, it does not appear that it would exceed the hardship mornally experienced when adult family members live distant from each other.”